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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/441,035 11/16/99 PRULLAGE

J 18794-000400

EXAMINER

JOSEPH R SNYDER  
TOWNSEND AND TOWNSEND AND CREW LLP  
TWO EMBARCADERO CENTER 8TH FLOOR  
SAN FRANCISCO CA 94111-3834

PM82/0607

ROWAN, K	
ART UNIT	PAPER NUMBER

3643

DATE MAILED:

06/07/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/441,035</b>	Applicant(s) <b>PRULLAGE</b>
	Examiner <b>Kurt Rowan</b>	Art Unit <b>3643</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on Apr 16, 2001

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-34 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-34 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	20) <input type="checkbox"/> Other: _____

Art Unit: 3643

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the attractant reservoir must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 12, 26-27 31, 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Pfeiffer for substantially the same reasons stated in the first Office Action.

The patent to Pfeiffer shows an insect bait station for attracting and killing insects such as flies having a body 15 with an external groove 17. In reference to claim 12, Pfeiffer discloses hanger

Art Unit: 3643

members in lines 76-85 of page 2. The pesticide used by Pfeiffer is self-adhering since it stays in the groove.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-11, 13-25, 28-30, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer as applied to claim 1 above, and further in view of Conlee for substantially the same reasons stated in the first Office Action.

The patents to Pfeiffer and Conlee show insect bait stations. Pfeiffer shows a conical shape and has been discussed above. Conlee shows a cylindrical body. In reference to claims 2-3, 29, 32, it would have been obvious to form the body of Pfeiffer as a cylinder as shown by Conlee since merely one equivalent shape is being substituted for another. In reference to claims 4, 6, 7, 11, Pfeiffer shows an elongated circumferential spiral groove that has a height at least two times larger than the width of the groove. In reference to claim 8, Pfeiffer shows a plurality of grooves 17b in Fig. 11. In reference to claims 9-10, Conlee does not disclose the size of the cylinder, but it would have been obvious to make the cylinder with a diameter from about 1/4 inches to about 2 inches and about 6 inches to about 18 inches in length since the size would be

Art Unit: 3643

determined through routine experimentation. In reference to claims 13-14, neither Pfeiffer or Conlee disclose how the bait stations are made. However, it would have been obvious to extrusion mold or injection mold the bait station since both molding methods are old and well known in the art. The examiner takes Official Notice that extrusion molding and injection molding are old and well known. In reference to claims 15-19, Pfeiffer and Conlee do not disclose the insecticide or pesticide used, but it would have been obvious to employ an known fast acting pesticide such as phenyl pyrazole. However, Pfeiffer discloses a viscous liquid. In reference to claims 20, 21, 23, Conlee discloses a pest attractant reservoir for a pheromone 8 inside the body. In reference to claim 22, it would have been obvious to provide Pfeiffer with an attractant affixed to the hanger since the location of the attractant is a matter of design choice since the function is the same. In reference to claim 24, Pfeiffer and Conlee do not disclose feeding attractants, but it would have been obvious to employ a feeding attractant since merely one attractant is being substituted for another. The examiner takes Official Notice that feeding attractants are old and well known. In reference to claim 25, Pfeiffer and Conlee do not disclose a cylinder sheath to store and transport the bait station, but it would have been obvious to employ a cylindrical sheath to transport the bait station so the poison does not come into contact with nontarget species. In reference to claim 28, Pfeiffer shows several different groove configurations such as a spiral groove and a plurality of horizontal grooves vertically aligned. It would have been obvious to employ a plurality of vertical grooves since the exact groove structure is a matter of design choice to be determined by routine experimentation. In reference to claim 30, both

Art Unit: 3643

Pfeiffer and Conlee do not disclose the groove area as a percent of the total surface area of the external surface, but it would have been obvious to employ a 30 percent groove area since the groove area would be determined through routine experimentation.

***Response to Arguments***

7. Applicant's arguments filed April 16, 2001 have been fully considered but they are not persuasive. Applicant's response overcomes the rejection under 35 USC 112, second paragraph. In regard to claim 1, applicant argues that the troughs of Pfeiffer is not a groove. But, a groove is defined as a long narrow channel ( The American Heritage Dictionary, Second College Edition, 1982, page 578). Hence the trough of Pfeiffer can be considered a groove. As to the 103 rejection, applicant argues that there is no motivation or suggestion provided in the cited references to modify the their teaching. In response to applicant's argument, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art since merely a change in shape is contemplated and the function is the same. The combination of Pfeiffer in view of Conlee would result in a cylindrical device having a groove extending around the outer surface in a spiral

Art Unit: 3643

having a self-adhering pesticide that would have the same expectation of success as Pfeiffer. Applicant has presented no evidence to show that the proposed combination would not work or that Pfeiffer would be inoperative. Applicant does not state that the groove is substantially vertical. Pfeiffer does not need to be modified to form a groove since one already exists. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3643

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



KURT ROWAN

PRIMARY EXAMINER

ART UNIT 3643

June 6, 2001